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10/075,065	02/13/2002	William Eugene Moser	47440-044001	7475
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Stephen T. Scherrer				ABEL JALIL, NEVEEN
McDermott, Will & Emery				ART UNIT
227 West Monroe Street				PAPER NUMBER
Chicago, IL 60606-5096			2165	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.	Applicant(s)	
10/075,065	MOSER ET AL.	
Examiner	Art Unit	
Neveen Abel-Jalil	2165	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 11/30/2007.
2a) This action is FINAL. 2b) This action is non-final.
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) Claim(s) _____ is/are allowed.
6) Claim(s) 1-20 is/are rejected.
7) Claim(s) _____ is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) Notice of Informal Patent Application
6) Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1-October -2007 has been entered.

2. The amendment filed on 30-November -2007 has been received and entered. Claims 1-20 are pending.

3. Applicant's amendment has overcome the previous claim objections and rejection under 112, second paragraph.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 12-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The claims lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter.

As such, they fail to fall within a statutory category. They are, at best, functional descriptive material *per se*.

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." Both types of "descriptive material" are nonstatutory when claimed as descriptive material *per se*, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994)

Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored on a computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. See *Diehr*, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an algorithm in *Benson* were unpatentable as abstract ideas because "[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer.").

The Examiner can't find any reference or embodiment in the specification to ascertain the corresponding structures for the claimed "means for" if in fact the Applicant's is choosing to invoke 112, sixth paragraph. There also appears to be no support or definition as to the claimed Data entry system" to be anything more than software logic; while Applicant's specification attempts to references Figure 1 in describing the so called "system"; Figure 1 is nothing more than a workflow diagram that outlines the steps in involved for the eventual storage in a database not in fact a "computer" nor any hardware device.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 3-5, 8-12, 14, 16-17, and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibbs (U.S. Patent No. 5,836,529) in view of Good (U.S. Patent No. 6,477,452 B2).

As to claim 1, Gibbs discloses a method for inspecting rail equipment and storing information relating to the inspection comprising:

providing rail equipment having a plurality of parts (See Gibbs column 3, lines 4-30);
inspecting the rail equipment to determine a damage condition of each of the parts of the rail equipment (See Gibbs column 16, lines 5-67, also see Gibbs column 4, lines 1-37);
providing a data entry system comprising a plurality of fields (See Gibbs column 15, lines 15-58, also see Gibbs column 16, lines 47-54, wherein “damage condition” reads on “mechanical failure”);
generating at least one report showing an overall damage condition of the rail equipment that is calculated from the information input into the data entry system (See Gibbs column 18, lines 1-67, also see Gibbs column 21, lines 1-41, and see Gibbs column 9, lines 31-56); and
providing a database interconnected with the data entry system for storing information input into the data entry system or generated by the data entry system (See Gibbs column 10, lines 26-36, and see Gibbs column 7, lines 18-47, and see Gibbs column 8, lines 42-66).

Gibbs shows:

monitoring and storing performance and status of railway equipment (See figure 9C, also see column 22, lines 1-30);

reporting capability on selected conditions related to rail equipment or entire train (See figure 9C, also see column 22, lines 1-30);

tracking and reporting (computerized train control map) of rail equipment conditions (whether locomotive is dead or isolated, and mechanical failure codes);

Gibbs does not expressly show

querying a user of the data entry system for information relating to the damage condition of each off the parts of the rail equipment;

entering the damage condition of each of the parts of the rail equipment in to each of the plurality of fields;

providing a plurality of dispositions, wherein at least one of the dispositions comprises dispatching a mobile repair unit to repair the rail equipment, wherein the mobile repair unit is a vehicle equipped to provide mechanical services to the rail equipment without requiring the rail equipment to be moved to a repair facility and automatically assigning via the data entry system, one of the dispositions to the rail equipment. However, Gibbs's reference as a whole teaches a computer aided dispatch system column 4, lines 42-45 in accordance with problem flag column 11, line 4, a tag status, an activity and an owner (i.e. dispatch unit crew) column 11, lines 31-33 under the command of the dispatcher column 7, lines 10-12, as well as data entry system in column 2, lines 38-67.

Good teaches querying a user of the data entry system for information relating to the damage condition of each off the parts of the rail equipment (See Good column 8, lines 37-47);

entering the damage condition of each of the parts of the rail equipment in to each of the plurality of fields (See Good Figure 4, shows damage status database with multiple fields);

providing a plurality of dispositions, wherein at least one of the dispositions comprises dispatching a mobile repair unit to repair the rail equipment, wherein the mobile repair unit is a vehicle equipped to provide mechanical services to the rail equipment without requiring the rail equipment to be moved to a repair facility (See Good column 8, lines 45-57, wherein the use of "MRU" is taught); and

automatically assigning a disposition from a plurality of dispositions, wherein at least one of the dispositions comprises repairing the rail equipment using a mobile repair system (See Good column 7, lines 40-50).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Gibbs with Good to include querying a user of the data entry system for information relating to the damage condition of each off the parts of the rail equipment; entering the damage condition of each of the parts of the rail equipment in to each of the plurality of fields; providing a plurality of dispositions, wherein at least one of the dispositions comprises dispatching a mobile repair unit to repair the rail equipment, wherein the mobile repair unit is a vehicle equipped to provide mechanical services to the rail equipment without requiring the rail equipment to be moved to a repair facility; and automatically assigning a plurality of dispositions, wherein at least one of the dispositions comprises repairing the rail equipment using a mobile repair system for the rail equipment and assigning one of the plurality of dispositions to the rail equipment because it provides for flexibility and minimization of rail equipment downtime (See Good column 1, lines 25-40) it is obvious that once the condition is determined then a reparation process will be assigned.

Gibbs as modified still does not expressly show based on the overall damage condition of the rail equipment.

However, Gibbs's reference as a whole teaches the overall damage condition of the rail equipment (i.e. to provide and assign plurality of status conditions, and setting alert status to dispatch a repair unit) having any type of content because Gibbs is directed to railroad transportation monitoring and management system and method by detecting, assigning status, and monitoring a set of real time identification, and display characteristics for the set of transports within the transportation network and generating an output display characterizing relationships between the set of transports based on the information collected in the monitoring step (See Abstract).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to further modify the teachings of Gibbs as modified to include the overall damage condition of the rail equipment because it provides a method for faster assistance, and more efficiently repairing of rail equipment (i.e. it is common to look at the over condition and then break it down part by part).

As to claims 3, Gibbs as modified discloses wherein the data entry system stores information relating to a plurality of types of railcars (See Gibbs column 3, lines 4-30).

As to claim 4, Gibbs as modified discloses wherein the railcars are selected from the group consisting of box cars, flat cars, hopper cars, general purpose tank cars, open top hopper and gondola cars, plastic pellet cars, pressure differential cars and pressure tank cars (See Gibbs

column 16, lines 13-51).

As to claim 5, Gibbs as modified discloses wherein the report comprises information related to whether the rail equipment must be repaired or whether the rail equipment is useable in its present state (See Gibbs column 10, lines 62-67, and see Gibbs column 11, lines 34, also see Gibbs column 16, lines 35-67, and see Gibbs column 17, lines 1-24).

As to claim 8, Gibbs as modified discloses assigning a damage indicator for each part of the rail equipment (See Gibbs column 2, lines 18-67, wherein "damage indicator" reads on "detection signals", also see Gibbs column 10, lines 62-67, and see Gibbs column 11, lines 1-5); and

inputting the damage indicator for each part of the rail equipment into the data entry system (See Gibbs column 19, lines 4-59).

As to claim 9, Gibbs as modified discloses adding information into the data entry system relating to the inspector of the rail equipment (See Gibbs column 1, lines 60-67, and see Gibbs column 2, lines 1-17).

As to claim 10, Gibbs as modified discloses wherein the information further comprises the identity of the rail equipment (See Gibbs column 3, lines 4-30, also see Gibbs column 10, lines 46-67, and see Gibbs column 11, lines 1-62).

As to claim 11, Gibbs as modified discloses selecting a record of rail equipment from the database (See Gibbs column 2, lines 38-67);
editing information on the record of the rail equipment (See Gibbs column 10, lines 26-36, and see Gibbs column 7, lines 18-47, and see Gibbs column 8, lines 42-66); and
saving the information to the database (See Gibbs column 10, lines 26-36).

As to claim 12, Gibbs discloses a data entry system for inputting information related to an inspection of rail equipment wherein the rail equipment comprises a plurality of parts comprising:

means for inputting information relating to the type of rail equipment (See Gibbs column 3, lines 4-30);

means for inputting information relating to an identification of the rail equipment (See Gibbs column 3, lines 4-30, also see Gibbs column 10, lines 46-67, and see Gibbs column 11, lines 1-62);

means for inputting the information relating to the damage condition of each of the parts of the rail equipment (See Gibbs column 4, lines 11-18, also see Gibbs column 22, lines 1-22, also see Gibbs column 16, lines 47-54, wherein "damage condition" reads on "mechanical failure"); and

means for calculating an overall damage condition for the rail equipment based on information relating to the damage condition of each of the parts of the rail equipment (See Gibbs column 21, lines 1-41, also see Gibbs column 9, lines 31-56); and

means for generating at least one report related to the information entered about the damage condition of each of the parts of the rail equipment (See Gibbs column 18, lines 1-67, also see Gibbs column 22, lines 23-67, also see Gibbs column 21, lines 1-41, and see Gibbs column 9, lines 31-56).

Gibbs shows:

monitoring and storing performance and status of railway equipment (See figure 9C, also see column 22, lines 1-30);

reporting capability on selected conditions related to rail equipment or entire train (See figure 9C, also see column 22, lines 1-30);

tracking and reporting (computerized train control map) of rail equipment conditions (whether locomotive is dead or isolated, and mechanical failure codes).

Gibbs does not expressly show means for querying a user for information relating to a damage condition of each of the parts of the rail equipment;

means for automatically determining and assigning a disposition from a plurality of dispositions, wherein at least one of the dispositions comprises dispatching a mobile repair unit to repair damage to the rail equipment, wherein the mobile repair unit is a vehicle equipped to provide mechanical services to the rail equipment without requiring the rail equipment to be moved to a repair facility; and

further showing the disposition assigned to the rail equipment based on the damage condition of the rail equipment. However, Gibbs's reference as a whole teaches a computer aided dispatch system column 4, lines 42-45 in accordance with problem flag column 11, line 4, a tag

status, an activity and an owner (i.e. dispatch unit crew) column 11, lines 31-33 under the command of the dispatcher column 7, lines 10-12.

Good teaches means for querying a user for information relating to a damage condition of each of the parts of the rail equipment (See Good corresponding rejection in claim 1 above); means for automatically determining and assigning a disposition from a plurality of dispositions, wherein at least one of the dispositions comprises dispatching a mobile repair unit to repair damage to the rail equipment, wherein the mobile repair unit is a vehicle equipped to provide mechanical services to the rail equipment without requiring the rail equipment to be moved to a repair facility (See Good corresponding rejection in claim 1 above); and

further showing the disposition assigned to the rail equipment based on the damage condition of the rail equipment (See Good corresponding rejection in claim 1 above).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Gibbs with Good to include means for automatically determining and assigning a disposition from a plurality of dispositions, wherein at least one of the dispositions comprises dispatching a mobile repair unit to repair damage to the rail equipment, wherein the mobile repair unit is a vehicle equipped to provide mechanical services to the rail equipment without requiring the rail equipment to be moved to a repair facility because it provides for flexibility and minimization of rail equipment downtime (See Good column 1, lines 25-40); it is obvious that once the condition is determined then a reparation process will be assigned.

Gibbs as modified still does not expressly show based on the overall damage condition of the rail equipment.

However, Gibbs 's reference as a whole teaches the overall damage condition of the rail equipment (i.e. to provide and assign plurality of status conditions, and setting alert status to dispatch a repair unit) having any type of content because Gibbs is directed to railroad transportation monitoring and management system and method by detecting, assigning status, and monitoring a set of real time identification, and display characteristics for the set of transports within the transportation network and generating an output display characterizing relationships between the set of transports based on the information collected in the monitoring step (See Abstract).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to further modify the teachings of Gibbs as modified to include the overall damage condition of the rail equipment because it provides a method for faster assistance, and more efficiently repairing of rail equipment (i.e. it is common to look at the over condition and then break it down part by part).

As to claim 14, Gibbs as modified discloses a database having the information input into the data entry system stored therein (See Gibbs column 6, lines 12-28, also see Gibbs column 8, lines 16-41).

As to claim 16, Gibbs as modified discloses wherein the rail equipment is a railcar (See Gibbs column 7, lines 37-67).

As to claim 17, Gibbs as modified discloses wherein the information relating to the condition of the rail equipment indicates whether the rail equipment is damaged (See Gibbs column 4, lines 11-18, also see Gibbs column 22, lines 1-22).

As to claim 19, Gibbs as modified discloses wherein the reports indicate whether the rail equipment is useable in its present form or whether the rail equipment needs repairs (See Gibbs column 19, lines 4-45).

As to claim 20, Gibbs as modified discloses means for saving the information and reports into a database (See Gibbs column 18, lines 1-67).

8. Claims 2, 6-7, 13, 15, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibbs (U.S. Patent No. 5,836,529) in view of Good (U.S. Patent No. 6,477,452 B2), and further in view of Jarrett (U.S. Patent No. 6,345,257 B1).

As to claim 2, Gibbs as modified still does not teach wherein the report comprises information relating to an estimated cost of repair of the rail equipment.

Jarrett teaches wherein the reports comprise information relating to an estimated cost of repair of the rail equipment (See Jarrett column 15, lines 27-67).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention was made to have further modified Gibbs as modified to include wherein the reports comprise information relating to an estimated cost of repair of the rail equipment.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have further modified Gibbs as modified by the teaching of Jarrett to include wherein the reports comprise information relating to an estimated cost of repair of the rail equipment because showing the cost associated with repair allows for better business management and ultimately cost reduction for the corporation.

As to claim 6, Gibbs as modified still does not teach wherein the report further comprises information related to whether the rail equipment is repairable by a mobile repair unit or whether the rail equipment must be shopped.

Jarrett teaches wherein the reports further comprise information related to whether the rail equipment is repairable by a mobile repair unit or whether the rail equipment must be shopped (See Jarrett column 1, lines 46-67, also see Jarrett abstract).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention was made to have further modified Gibbs as modified to include wherein the reports further comprise information related to whether the rail equipment is repairable by a mobile repair unit or whether the rail equipment must be shopped.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have further modified Gibbs as modified by the teaching of Jarrett to include wherein the reports further comprise information related to whether the rail equipment is repairable by a mobile repair unit or whether the rail equipment must be shopped because it allows for quicker and efficient response time to problem reporting thereby cutting operational business costs.

As to claims 7, and 18, Gibbs as modified still does not teach printing blank forms relating to the rail equipment from the data entry system.

Jarrett teaches printing blank forms relating to the rail equipment from the data entry (See Jarrett column 7, lines 63-67, and see Jarrett column 8, lines 1-13).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention was made to have further modified Gibbs as modified to include printing blank forms relating to the rail equipment from the data entry.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have further modified Gibbs as modified by the teaching of Jarrett to include printing blank forms relating to the rail equipment from the data entry because it allows for accommodation of user preferences and customization and provides for availability of on the spot trouble data entry means for maintenance/inspection crew.

As to claim 13, Gibbs as modified does not teach wherein the report comprises information relating to an estimated cost of repair for the rail equipment based on the information input relating to the condition of the railcar equipment.

Jarrett teaches wherein the reports comprise information relating to an estimated cost of repair for the railcar equipment based on the information input relating to the condition of the railcar equipment (See Jarrett column 15, lines 27-67, also see Jarrett column 5, lines 15-25).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention was made to have further modified Gibbs as modified to include wherein

the reports comprise information relating to an estimated cost of repair for the railcar equipment based on the information input relating to the condition of the railcar equipment.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have further modified Gibbs as modified by the teaching of Jarrett to include wherein the reports comprise information relating to an estimated cost of repair for the railcar equipment based on the information input relating to the condition of the railcar equipment because showing the cost associated with repair allows for better business management and ultimately cost reduction for the corporation.

As to claim 15, Gibbs as modified still does not teach means for calculating an estimated total repair cost for the rail equipment.

Jarrett teaches means for calculating an estimated total repair cost for the rail equipment (See Jarrett column 15, lines 27-67).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention was made to have further modified Gibbs as modified to include means for calculating an estimated total repair cost for the rail equipment.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have further modified Gibbs as modified by the teaching of Jarrett to include means for calculating an estimated total repair cost for the rail equipment because showing the cost associated with repair allows for better business management and ultimately cost reduction for the corporation.

Response to Arguments

9. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. For complete list of relevant art, see PTO-form 892.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neveen Abel-Jalil whose telephone number is 571-272-4074. The examiner can normally be reached on 8:30AM-5:30PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christian Chace can be reached on 571-272-4190. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Neveen Abel-Jalil
Primary Examiner
January 10, 2008